

Date: April 2, 2020: Commission Staff's Compilation of Public Comments in Docket No. 2019-387-A. Commission Staff continues to work on its proposed draft regulation for Docket No. 2019-387-A.

**PUBLIC SERVICE COMMISSION
CHAPTER 103**

Statutory Authority: 1976 Code Section 58-3-140

LEGEND:

**OFFICE OF REGULATORY STAFF
DOMINION ENERGY SOUTH CAROLINA,
INC.**

**DUKE ENERGY CAROLINAS, LLC & DUKE
ENERGY PROGRESS, LLC**

**CONSUMER DATA INDUSTRY ASSOCIATION
S. JAHUE MOORE, ESQUIRE**

103-823.2 Protection of Customer Data

A. Definitions of Key Terms

- (1) **Aggregated Data.** The term “aggregated data” means customer data, alone or in combination with non-customer data, resulting from processing (e.g., average of a group of customers) or the compilation of customer data from which all unique identifiers have been removed.
- (2) **Commission.** The term “Commission” means the Public Service Commission of South Carolina.
- (3) For purposes of this section, “customer data” means data about a customer’s electric, natural gas, water, or wastewater usage; information that is **made available obtained** as part of an advanced metering infrastructure; and **personal identifying information** in the possession of electric, natural gas, water or wastewater public utilities, including the name, account number, billing history, address of the customer, email address, telephone number, and fax number.
Customer Data. The term “customer data” means non-public retail customer-specific data or information that has been obtained or compiled by a utility in connection with the supplying of Commission-regulated electric, natural gas, waste, or wastewater services. Customer data includes data or information that is: (a) collected from the meter, by the utility, and stored in its data systems for billing purposes; (b) customer-specific usage information for regulated utility service; (c) about the customer’s participation in regulated utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs; or (d) any other non-public information specific to a customer that is related to electricity consumption, load profile, or billing history.
- (4) **Non-Public Utility Operations.** The term “non-public utility operations” means all business enterprises engaged in by a utility that are not regulated by the Commission or otherwise subject to public utility regulation at the state or federal level.
- (5) **Primary Purpose.** The term “primary purpose” means the collection, storage, use, or disclosure of covered information to (i) provide or bill for electrical power; (ii) provide for system, grid, or operational needs; (iii) provide services as required by state or federal law or as specifically authorized by an order of the Commission; or (iv) plan, implement, or evaluate demand response, energy management, or energy efficiency programs under contract with a utility, under contract with the Commission, or as part of a Commission-authorized program conducted by a governmental entity under the supervision of the

Commission.

- (6) **Secondary Commercial Purpose.** The term “secondary commercial purpose” means any purpose that is not a primary purpose.
- (7) **Third Party.** The term “third party” means a person who is not the customer, nor any of the following: (i) an agent of the customer designated by the customer with the utility to act on the customer’s behalf; (ii) a regulated utility serving the customer; or (iii) a contracted agent of the utility. For purposes of this rule, “third party” includes any non-public utility operations or affiliate of the utility.
- (8) **Unique Identifier.** The term “unique identifier” means a customer’s name, account number, meter number, mailing address, telephone number, or email address.

B. Data which has been aggregated to a degree that individual customer information is not identifiable shall not be considered “customer data.”

C. ~~B~~ Customer Consent:

- (1) A public utility shall not share, disclose, or otherwise make accessible to any third party a customer’s data, except as provided in subdivision (e) or upon the consent of the customer.
- (2) A public utility shall not sell a customer’s data or any other personally identifiable information for any purpose without the consent of the customer.
- (3) The utility or its contractors shall not provide an incentive or discount to the customer for accessing the customer’s data without the prior consent of the customer.
- (4) Before requesting a customer’s consent to disclosure of customer data, a utility shall be required to make a full disclosure to the customer of the nature and scope of the data proposed to be disclosed, the identity of the proposed recipient and the intended use of the data by the proposed recipient.

D. ~~C~~ If a utility contracts with a third party for a service that allows a customer to monitor the customer’s usage, and that third party uses the data for a secondary commercial purpose, the contract between the utility and the third party shall provide that the third party prominently discloses that secondary commercial purpose to the customer and secures the customer’s consent to the use of his or her data for that secondary commercial purpose prior to the use of the data.

E. ~~D~~ A utility shall use reasonable security procedures and practices to protect a customer’s unencrypted consumption data from unauthorized access, destruction, use, modification, disclosure, and to prohibit the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer’s consent.

F. ~~E~~ Exceptions to Sections A through ~~E~~ ~~D~~:

- (1) This section shall not preclude a utility from using customer aggregate consumption data for analysis, reporting, or program management if all information has been removed regarding the individual identity of a customer.
- (2) This section shall not preclude a utility from disclosing ~~a customer’s~~ **customer** data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, or energy efficiency programs, **or for fraud prevention**

purposes, provided that the utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal **identifiable** information **contained in the customer data** from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's prior consent to that use.

(3) This section shall not preclude a utility from disclosing customer data **where in the course of its operations**

- i. **Where** necessary to provide safe and reliable service **and**;
- ii. As required or permitted under state or federal law or by an order of the Commission **or a governmental town or municipality**;
- iii. **Including disclosures pursuant to and permitted by the Fair Credit Reporting Act Section 1681 et seq., Title 15 of the United States Code including for purposes of furnishing account and payment history information to and procuring consumer reports from a consumer reporting agency as defined by 15 U.S.C. Section 1681**;
- iv. **Upon valid request from law enforcement**;
- v. **To respond to an emergency**;
- vi. **To respond to service interruption reports or service quality issues**;
- vii. **To restore power after a storm or other disruption**;
- viii. **To respond to customers' requests for line locations, installation or repair of streetlights, support for construction or tree trimming/removal by customer, or other service orders or requests**;
- ix. **To inform customers as to tree trimming/vegetation control plans and schedules**;
- x. **To respond to claims for property damage by the customer resulting from tree trimming/vegetation control or utility construction**;
- xi. **To respond to customer complaints**;
- xii. **To protect the health or welfare of the customer or to prevent damage to the customer's property**;
- xiii. **To assist the customer in obtaining assistance from social services, community action, or charitable agencies**;
- xiv. **To perform credit checks where customer deposits might otherwise be required or retained**;
- xv. **Where circumstances require prompt disclosure of specific information to protect customers' interest or meet customers' reasonable customer service expectations; or**

- xvi. This section shall not preclude a utility from, in its provision of regulated utility service, disclosing customer data to a third party, consistent with the utility's most recently approved Code of Conduct, to the extent necessary for the third party to provide goods or services to the utility and upon written agreement by that third party to protect the confidentiality of such customer data.**

G.F If a customer chooses to disclose his or her data to a third party that is unaffiliated with, and has no other business relationship with, the utility, the utility shall not be responsible for the security of that data, or its use or misuse.

H. G Utility Guidelines:

- (1.) Each electrical, natural gas, water or wastewater utility shall develop and seek Commission approval of guidelines for implementation of this section.
- (2.) The electrical, natural gas, water or wastewater utility shall file its initial guidelines within 180 days for Commission approval. The guidelines should, at minimum, address the following:
 - a. Customer notice and awareness – practices to explain policies and procedures to customers.
 - b. Customer choice and consent – process that allow the customer to control access to customer data including processes for customers to monitor, correct or limit the use of customer data.
 - c. Customer data access – procedures for use of customer data, purpose for collection, limitations of use of customer data and process for customer non-standard requests.
 - d. Data quality and security procedures and measures – procedures for security and methods to aggregate or anonymize data.
 - e. Utility Accountability and Auditing – reporting of unauthorized disclosures, training protocol for employees, periodic evaluations, self-enforcement procedures and penalties

I. No Private Right of Action

These regulations shall be enforced by regulatory enforcement actions only. No private right of action for damages is created hereby.